

GARY K. NELSON, THE ATTORNEY GENERAL
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ARIZONA ATTORNEY GENERAL

DEPARTMENT OF LAW OPINION NO. 72-9 (R-31)

REQUESTED BY: KENNETH G. FLICKINGER
Registrar of Contractors

QUESTION: May the Registrar of Contractors expend monies deposited to the Contractors' License Fund if such expenditures are in excess of the amount appropriated by the Legislature in the general appropriation bill?

ANSWER: Yes, within the restrictions of A.R.S. § 32-1107.

NOTE: Department of Law Opinion No. 66-22, Answer No. 3, is overruled to the extent it is inconsistent herewith.

A.R.S. § 32-1107.A provides:

"A. Fees received under this chapter shall be paid to the state treasurer and by him placed in a special fund known as the contractors' license fund. Ten per cent of each deposit made by the registrar for credit to the fund shall inure to and be immediately transferred to the general fund, and the remainder is appropriated to enforce the provisions of this chapter. Any surplus remaining in the fund at the end of the fiscal year shall be credited to the contractors' license fund for the succeeding fiscal year, but all balances remaining in the fund in excess of fifty thousand dollars, except renewal fees for the ensuing fiscal year, shall revert to the general fund." (Emphasis added.)

The particular funding statute of a specific agency must govern the nature of appropriations to be enacted by the Legislature. Shapley v. Frohmiller, 64 Ariz. 35, 165 P.2d 306 (1946).

Although the Legislature is empowered to appropriate a given sum of money for a particular department of state government, the limitation on the appropriation is that it merely provides funds to meet previously authorized expenses. An appropriation bill is not "legislation" in a strict sense, but is merely to provide funds for the particular agency. Carr v. Frohmiller, 47 Ariz. 430, 56 P.2d 644 (1936).

The specific funding statute of the Registrar of Contractors, A.R.S. § 32-1107, is worded as a continuing or recurring appropriation. An appropriation need not be made in any particular form of words or in expressed terms. All that is required is a clear expression of the legislative will on the subject. See Crane v. Frohmiller, 45 Ariz. 490, 45 P.2d 955 (1935); 81 C.J.S., States, p. 1214.

A.R.S. § 32-1107 specifically excludes balances under \$50,000.00 of the Contractors' License Fund from reverting to the General Fund. A.R.S. § 35-172 provides that expenditures authorized by separate acts shall be classified as appropriated by the Legislature. These provisions and A.R.S. § 35-173, dealing with allotments, would allow the Finance Department to adjust the Registrar's schedules and accounts accordingly.

The provisions of a general appropriation bill will not repeal by reference or restrict a prior continuing appropriation statute. Article 4, Part 2, Section 20 of the Arizona Constitution provides:

"Section 20. The general appropriation bill shall embrace nothing but appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt. All other appropriations shall be made by separate bills, each embracing but one subject."

Judicial interpretation of this section of the Constitution has shown that an attempt in a general appropriation bill to repeal prior specific legislation is invalid. State v. Angle,

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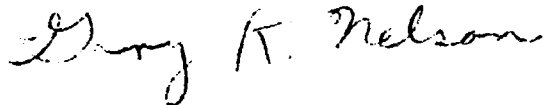
54 Ariz. 13, 91 P.2d 705 (1939); Carr v. Frohmler, supra;
State v. Ash, 53 Ariz. 197, 87 P.2d 270 (1939).

The Arizona Supreme Court in Hudson v. Brooks, 62 Ariz.
505, 158 P.2d 661 (1945), said at page 515:

" . . . Nor will the special
continuing appropriations be superseded
by any appropriation appearing in the
general biennial appropriation bill until
the existing continuing appropriation is
constitutionally repealed by the legisla-
ture. [Citations omitted.]"

We conclude that a general appropriations act cannot
repeal, amend or supersede a continuing appropriation, and
it is therefore our opinion that a continuing appropriation
such as A.R.S. § 32-1107, when in conflict with the general
appropriation act, will govern. Cf. Department of Law
Opinion No. 38-112 to the same effect. To the extent that
Department of Law Opinion No. 66-22 is inconsistent with
this opinion, that portion of Opinion No. 66-22 is hereby
expressly overruled.

Respectfully submitted,



GARY K. NELSON
The Attorney General

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